

1 STATE OF NEW JERSEY
2 GOVERNMENT RECORDS COUNCIL

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6 FORMAL MEETING

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8 TRANSCRIPT OF PROCEEDINGS

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13 LOCATION: 101 South Broad Street

14 Trenton, New Jersey

15 DATE: Wednesday, June 27, 2007

16 TIME: 9:45 a.m. to 11:56 a.m.

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1 COUNCIL MEMBERS:

2 VINCENT P. MALTESE, Chair

3 JANICE KOVACH

4 DAVID FLEISHER

5 KATHRYN FORSYTH

6

7 ALSO PRESENT:

8 CATHERINE STARGILL, ESQ., Executive Director

9 KARYN GORDON, ESQ.

10 JYOTHI PAMIDIMUKKALA

11 TIFFANY L. MAYERS

12 JOHN STEWART, ESQ.

13 FRANK CARUSO

14 REBECCA ANN STEESE

15 DARA LOWNIE

16 ANDRIA GRUNDFEST, DAG

17 MEAGHAN TUOHEY-KAY, ESQ.

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1 MR. MALTESE: Good morning, ladies
2 and gentlemen. Welcome to our June 2007. This
3 meeting is called pursuant to the provisions of
4 the Open Public Meeting Act. Notices of this
5 meeting were faxed to the Newark Star Ledger,
6 Trenton Times, Courier Post in Cherry Hill, the
7 Secretary of State, and e-mailed to New Jersey
8 Foundation for Open Government on June 21, 2007.

9 Proper notice having been given, the
10 secretary's directed to include this statement in
11 the minutes.

12 Roll call, please.

13 MS. STARGILL: Mr. Maltese.

14 MR. MALTESE: Here.

15 MS. STARGILL: Ms. Berg Tabaken.

16 Janice Kovach.

17 MS. KOVACH: Here.

18 MS. STARGILL: Kathryn Forsyth.

19 And Dave Fleisher.

20 MR. FLEISHER: Here.

21 MR. MALTESE: In the event of a fire
22 alarm activation, please exit the building
23 following the exit signs located within the
24 conference rooms and throughout the building. The
25 exit signs will direct you to two fire evacuation

5

1 stairways located in the building. Upon leaving,
2 please follow the fire wardens which can be
3 located by their yellow helmets. Please follow
4 the flow of traffic away from the building.

5 I'll entertain a motion at this time
6 to go into closed session, please.

7 Whereas, N.J.S.A. 10:4-12 permits a
8 public body to hold a closed session during a
9 public meeting.

10 Whereas, the Government Records
11 Council has deemed it necessary to go into closed
12 session to discuss matters which are exempt from
13 public discussion under the Open Public Meeting

14 Act.

15 And whereas, the regular meeting of
16 the Council will reconvene at the conclusion at
17 the closed meeting.

18 Now, therefore, be it resolved that
19 the Council will convene in closed session
20 pursuant to N.J.S.A. 10:40-12B7 to discuss Meaders
21 versus William Patterson University, Renna versus
22 Union County Alliance, Johnson versus Township of
23 Hillside, and Caggiano versus the Borough of
24 Stanhope.

25 Be it further resolved in which the

6

1 Council will disclose to the public the matters
2 discussed and determined in closed session as soon
3 as possible after final decisions are issued in
4 the above cases.

5 Motion, please.

6 MR. FLEISHER: So moved.

7 MS. KOVACH: Second.

8 MR. MALTESE: Thank you.

9 MS. GORDON: Time, Mr. Chairman?

10 MR. MALTESE: Yes. This is 9:53.

11 Roll call, please.

12 MS. STARGILL: Mr. Maltese.

13 MR. MALTESE: Yes.

14 MS. STARGILL: Ms. Kovach.

15 MS. KOVACH: Yes.

16 MS. STARGILL: Mr. Fleisher.

17 MR. FLEISHER: Yes.

18 MR. MALTESE: Thank you.

19 Ladies and Gentlemen, we're in

20 closed session for approximately a half hour.

21 (Whereupon, the Council went into

22 closed session.)

23 MR. MALTESE: We'll go into public

24 session. It is 10:40 a.m.

25 Roll call, please.

1 MS. STARGILL: Mr. Maltese.

2 MR. MALTESE: Present.

3 MS. STARGILL: Ms. Kovach.

4 MS. KOVACH: Yes.

5 MS. STARGILL: Ms. Forsyth.

6 MS. FORSYTH: Yes.

7 MS. STARGILL: Mr. Fleisher.

8 MR. FLEISHER: Here.

9 MS. STARGILL: Mr. Richman.

10 MR. RICHMAN: For the purpose of the
11 March minutes.

12 MR. MALTESE: Ladies and gentlemen,
13 won't you please join me in the Pledge of
14 Allegiance.

15 (Whereupon, the Pledge of Allegiance
16 was recited.)

17 MR. MALTESE: Thank you very much.
18 The first order of business is
19 approval of the minutes of January 31, 2007. We
20 do not have a quorum for that session. Robin is

21 not present today, and she is the only other
22 member besides David and myself that attended that
23 meeting.
24 I'll entertain a motion to accept
25 the March 28, 2007 open and closed session

8

1 minutes, as written.

2 MR. FLEISHER: So moved.

3 MS. FORSYTH: I have one question.

4 On Page 12, Mr. Chairman, March 28th, open session
5 about the fifth or six paragraph, Robin and David
6 suddenly make appearance making motions and they
7 weren't at the meeting. I think that there may be
8 a typo.

9 MR. MALTESE: That would be a
10 problem.

11 MS. STARGILL: I'm sorry.

12 MS. FORSYTH: Page 12. If you go
13 down to the fifth paragraph or six paragraph. I

14 make a motion, Chuck is seconding it, and then

15 Robin and David are making motions, but they're

16 not present.

17 MR. MALTESE: So we will make that

18 amendment.

19 MS. STARGILL: That will be removed.

20 MR. MALTESE: Anything else.

21 MS. FORSYTH: No.

22 MR. MALTESE: All right. Motion, as

23 amende, please.

24 MR. FLEISHER: As amended.

25 MR. MALTESE: Second?

9

1 MS. FORSYTH: Second.

2 MR. MALTESE: Thank you.

3 Roll call.

4 MS. STARGILL: Yes.

5 Mr. Maltese.

6 MR. MALTESE: Yes.

7 MS. STARGILL: Ms. Forsyth.

8 MS. FORSYTH: Yes.

9 MS. STARGILL: Mr. Richman.

10 MR. RICHMAN: Yes.

11 MR. MALTESE: Thank you.

12 Thank you, Mr. Richman.

13 (Mr. Richman exits room.)

14 MR. MALTESE: Open and closed

15 session of May 30, 2007. Any comments, questions,

16 modifications, additions?

17 MS. STARGILL: I'm sorry. Who made

18 the motion?

19 MR. MALTESE: David.

20 MS. FORSYTH: And I seconded.

21 MS. STARGILL: Okay. Thank you.

22 MR. MALTESE: May 30th, open and

23 closed, any comments?

24 Motion?

25 MS. KOVACH: So moved.

1 MR. MALTESE: Thank you.

2 Second?

3 MS. FORSYTH: Second.

4 MR. MALTESE: Thank you.

5 Roll call.

6 MS. STARGILL: Mr. Maltese.

7 MR. MALTESE: Yes.

8 MS. STARGILL: Ms. Kovach.

9 MS. KOVACH: Yes.

10 MS. STARGILL: Ms. Forsyth.

11 MS. FORSYTH: Yes.

12 MS. STARGILL: Mr. Fleisher.

13 MR. FLEISHER: Yes.

14 MR. MALTESE: Thank you.

15 You have the before you a list of

16 Administrative Council adjudications consisting of

17 nine items. That is an administerial council. We

18 basically move the Executive Director direction on

19 that.

20 I'll entertain a motion.

21 MR. FLEISHER: So moved.

22 MR. MALTESE: Thank you.

23 Second?

24 MS. FORSYTH: Second.

25 MR. MALTESE: Thank you.

11

1 Roll call.

2 MS. STARGILL: Mr. Maltese.

3 MR. MALTESE: Yes.

4 MS. STARGILL: Ms. Kovach.

5 MS. KOVACH: Yes.

6 MS. STARGILL: Ms. Forsyth.

7 MS. FORSYTH: Yes.

8 MS. STARGILL: And Mr. Fleisher.

9 MR. FLEISHER: Yes.

10 MR. MALTESE: Okay. Now we get into

11 complaint for adjudication.

12 Thomas Johnson versus Township of

13 Hillside is being postponed until July meeting.

14 We do not have a quorum for the next

15 two cases, given the fact that at least two of us
16 need to recuse ourselves, so we do not have a
17 quorum for those.

18 I will ask David to please handle
19 Item 14, which is D'Aquanni versus Borough of
20 Roselle, since I need to recuse myself.

21 (Whereupon, Mr. Maltese is recused.)

22 MR. FLEISHER: Thank you. I ask the
23 Executive Director to --

24 MS. STARGILL: Actually, that's Mr.
25 Caruso's case.

12

1 MR. CARUSO: The Executive Director
2 respectfully recommends for Council to find that
3 pursuant N.J.S.A. 47:1A-5(g) and N.J.S.A.
4 47:1A-5(i). The custodian's failure to respond to
5 the complainant's OPRA in writing granting access,
6 denying access, seeking clarification or
7 requesting an extension of time within the

8 statutory mandate of seven business days results

9 in it being denied.

10 Pursuant to N.J.S.A. 47:1A-6, the
11 custodian has not borne her burden of proving a
12 lawful denial of access of the complainant's
13 February 9, 2007 OPRA request.

14 Number 3, because no records
15 responsive exist to Items No. 1 and No. 2, and the
16 remaining request items do not list specific
17 identifiable government records, it is concluded
18 that the custodian's failure to respond to the
19 complainant's February 9, 2007 OPRA request does
20 not rise to the level of a violation of OPRA and
21 unreasonable denial of access under the
22 circumstances. However, the custodian's unlawful
23 denial of access appears negligent and needless
24 since she is vested with the legal responsibility
25 of granting and denying access in accordance with

1 the law.

2 MR. FLEISHER: Thank you.

3 I'll entertain a motion.

4 MS. FORSYTH: So moved.

5 MS. KOVACH: Second.

6 MR. FLEISHER: Thank you.

7 Roll call, please.

8 MS. MAYERS: Ms. Kovach.

9 MS. KOVACH: Yes.

10 MS. MAYERS: Ms. Forsyth.

11 MS. FORSYTH: Yes.

12 MS. MAYERS: Mr. Fleisher.

13 MR. FLEISHER: Yes.

14 (Whereupon, Mr. Maltese returns.)

15 MR. MALTESE: Fisher versus Board of

16 Education.

17 MS. FORSYTH: I have to recuse

18 myself.

19 MR. MALTESE: Okay, Kathryn, you're

20 going to recuse yourself.

21 (Whereupon, Ms. Forsyth is recused.)

22 MR. MALTESE: Whose case is that,

23 please?

24 MS. LOWNIE: That is mine, sir.

25 The Executive Director respectfully

14

1 recommends the Council find that:

2 One. Because the requested proposal

3 was incorporated as part of the contract between

4 the Lakewood Board of Education and Catapult

5 Learning for Title I services which was approved

6 by the Board on September 28, 2006, prior to the

7 complainant's OPRA request, the request for the

8 proposal is a government record pursuant to

9 N.J.S.A. 47:1A-1.1 and is subject to immediate

10 public access as part of the approved contract.

11 Thus, the custodians assertion that the requested

12 proposal is exempt as deliberative material or

13 information which, if disclosed, would give an

14 advantage to bidders pursuant N.J.S.A. 47:1A-1.1

15 is invalid. As such, the custodian has not borne
16 his burden of proving a lawful denial of access to
17 the requested proposal pursuant to N.J.S.A.
18 47:1A-6.

19 Two. The custodian's assertion that
20 the complainant already possesses the requested
21 proposal is not a lawful reason for a denial of
22 access pursuant to Thomas Caggiano, the Borough of
23 Stanhope GRC Complaint No. 2005-211 ad seq January
24 2006.

25 Three. The custodian violated

15

1 N.J.S.A. 47:1A-5(e) by not providing the
2 complainant with immediate access to the requested
3 pages of Catapult Learning's proposal detailing
4 the budget.

5 Four. Although the custodian did
6 unlawfully deny the complainant access to the
7 requested proposal at the time of the

8 complainant's OPRA requests, dated October 5, 2006
9 and October 24, 2006, and violated N.J.S.A.
10 47:1A-5(e) by not providing immediate access to
11 the requested proposal, the custodian did provide
12 the requested proposal to the complaint and the
13 and the GRC on April 12, 2007. It is therefore
14 concluded that the custodian's actions do not rise
15 to the level of a knowing and willful violation of
16 OPRA and unreasonable denial of access under the
17 totality of the circumstances. However, the
18 custodian's unlawful denial of access appears
19 negligent and heedless since he is vested with the
20 legal responsibility of granting and denying
21 access in accordance with the law.

22 MR. MALTESE: Dara, am I correct in
23 saying that approximately six months elapsed
24 between the request and the response. October to
25 April?

1 MS. LOWNIE: Now between the
2 response. They did respond. They initially
3 denied access. But you are correct, six months
4 went by before the record was provided.

5 MR. MALTESE: Did you get any
6 indication during your investigation as to why
7 that kind of time period elapsed.

8 MS. LOWNIE: No.

9 MR. MALTESE: Well, I'm a little
10 concerned about the fact that six months elapsed
11 to provide a document which could have been
12 provided in a matter of days, in my view. I'm
13 suggesting -- I don't have a problem with the
14 recommendations except with the last one, knowing
15 and willful. I would like the OAL to weigh in on
16 that issue as to whether or not the an OAL
17 believes that there is a cause, a knowing and
18 willful violation of OPRA and make a
19 recommendation to us. It just seems that the time
20 period that has elapsed in this case is untenable.

21 I don't know how other members feel
22 about this, but that would be my suggestion.

23 MR. FLEISHER: Was there other
24 communication during the six-month period that
25 provided any type of reason or rational?

17

1 MS. LOWNIE: At the time of the
2 initial denial, the custodian was claiming that
3 the proposal was still a work in progress. But at
4 the end of the investigation, it was determined
5 that the proposal was attached as part of the
6 contract packet. So I think there was a
7 miscommunication as to what was actually part of
8 the contract.

9 MR. MALTESE: Between October and
10 April were there communications ongoing that you
11 were able to discern?

12 MS. LOWNIE: Between both parties?

13 MR. MALTESE: Yes.

14 MS. LOWNIE: Not anything that's not
15 currently listed in here, no.

16 MR. MALTESE: Any other comments?

17 I'll entertain a motion.

18 MS. STARGILL: As amended?

19 MR. MALTESE: Well, I guess I can

20 make the motion. I'll make the motion that we

21 accept the Executive Director's recommendation with

22 exception of the knowing and willful provision

23 which is Item 4, I believe. And suggest that in

24 lieu thereof we send the matter to the Office of

25 Administrative Law for a determination as to

18

1 whether or not this custodian acted in a knowing

2 and willful way under the totality of the

3 circumstances.

4 MR. FLEISHER: Second.

5 MR. MALTESE: Roll call.

6 MS. MAYERS: Mr. Maltese.

7 MR. MALTESE: Yes.

8 MS. MAYERS: Ms. Kovach.

9 MS. KOVACH: Yes.

10 MS. MAYERS: Mr. Fleisher.

11 MR. FLEISHER: Yes.

12 (Whereupon, Ms. Forsyth returns.)

13 MR. MALTESE: Meaders versus William
14 Patterson University.

15 MS. GORDON: In this matter, the
16 Executive Director respectfully recommends that
17 the Council find that:

18 One. The list of Mr. Bouvier's
19 specific accomplishments set forth in Part 2 of
20 the performance evaluation should not be disclosed
21 because it is a personnel record pursuant N.J.S.A.
22 47:1A-10.

23 Two. Because the last sentence
24 beginning comments contained in Part 6 of the
25 performance evaluation as pre-decisional and

1 deliberative in nature containing clues,

2 recommendations, or advise about agency decisions.

3 It is advisory consultative or deliberative

4 material and should not be disclosed.

5 I'll skip the citations.

6 MR. MALTESE: Okay. My view on this

7 case is that we are strictly construing that

8 provision of the Act. I think it's Section 10.

9 And I understand the reason for the

10 recommendation. I would suggest, although this

11 body has not yet concluded that we have authority

12 to decide cases under common law, given the fact

13 that we've petitioned the Court to clarify our

14 responsibility and jurisdiction in that regard,

15 but I would invite the request, should this body

16 decide to accept the recommendations, that there

17 is another avenue open to the request therein;

18 that is the common law remedy at this point in

19 time. That can be pursued through the Superior

20 Court at this point in time. Or the requester can

21 await a determination by the Appellate Division

22 clarifying the request that we've posed to it.

23 So I will suggest that we make a
24 motion to accept the recommendation in this case
25 of the Executive Director, as written.

20

1 MR. FLEISHER: Second.

2 MR. MALTESE: Roll call.

3 MS. MAYERS: Mr. Maltese.

4 MR. MALTESE: Yes.

5 MS. MAYERS: Ms. Kovach.

6 MS. KOVACH: Yes.

7 MS. MAYERS: Ms. Forsyth.

8 MS. FORSYTH: Yes.

9 MS. MAYERS: Mr. Fleisher.

10 MR. FLEISHER: Yes.

11 MR. MALTESE: Renna versus Union

12 County. This is 2005-208.

13 MS. STEESE: The Executive Director

14 respectfully recommends that the Council dismiss

15 the complaint this complaint because the

16 complainant has voluntary withdrawn the complaint

17 in writing to the Office of -- sorry. I should

18 say in a letter in writing to the Office of

19 Administrative Law, dated May 30, 2007.

20 MR. FLEISHER: So moved.

21 MR. MALTESE: As amended?

22 MR. FLEISHER: As amended.

23 MR. MALTESE: Thank you.

24 Second?

25 MS. FORSYTH: Second.

21

1 MR. MALTESE: Thank you.

2 Roll call.

3 MS. MAYERS: Mr. Maltese.

4 MR. MALTESE: Yes.

5 MS. MAYERS: Ms. Kovach.

6 MS. KOVACH: Yes.

7 MS. MAYERS: Ms. Forsyth.

8 MS. FORSYTH: Yes.

9 MS. MAYERS: Mr. Fleisher.

10 MR. FLEISHER: Yes.

11 MR. MALTESE: Thank you.

12 Renna versus Union County Alliance.

13 MS. GORDON: The Executive Director

14 respectfully recommends that the Council find that

15 due to the contested facts surrounding this case,

16 the case shall can be referred to the Office of

17 Administrative Law for a hearing to determine

18 whether the Union County Alliance is a public

19 agency under OPRA, N.J.S.A. 47:1A-1.1, and as such

20 whether the custodian unlawfully denied access to

21 the requested records.

22 MR. MALTESE: Now, this is here on a

23 motion for reconsideration?

24 MS. GORDON: That is correct.

25 MR. MALTESE: And my understanding

1 that in order to entertain that and in order for

2 this party to prevail, there must be some new
3 evidence presented to us, which was not available
4 to us at the first time we made a decision; is
5 that correct?

6 MS. GORDON: That's correct, Mr.
7 Chairman.

8 MR. MALTESE: Do you have some new
9 evidence to provide to us in this case?

10 MS. GORDON: Yes. In June of 2007,
11 at the request of the Government Records Council,
12 the custodian sent to the Government Records
13 Council a copy of the contract which exists
14 between the Union County Alliance and Union County
15 for 2005 covering the date of the request which
16 was made in this matter. That evidence was not
17 previously submitted, and it suggests a vendor or
18 contractor relationship with the county. It is by
19 no means dispositive. And because of the problem
20 with the clarity of the evidence, that's why we're
21 recommending referral to the OAL.

22 MR. MALTESE: All right. So the
23 real question still on the table is whether or not

24 the Alliance is a government agency, a public
25 agency.

23

1 MS. STARGILL: The new evidence
2 presented to the Council calls in question our
3 determination that the organization was, in fact,
4 a public agency.

5 MR. MALTESE: So we'll send it OAL
6 and asking for review and recommendation and we'll
7 go from there.

8 Motion?

9 MS. FORSYTH: So moved.

10 MR. MALTESE: Second?

11 MS. KOVACH: Second.

12 MR. MALTESE: Thank you.

13 Roll call.

14 MS. MAYERS: Mr. Maltese.

15 MR. MALTESE: Yes.

16 MS. MAYERS: Ms. Kovach.

17 MS. KOVACH: Yes.

18 MS. MAYERS: Ms. Forsyth.

19 MS. FORSYTH: Yes.

20 MS. MAYERS: Mr. Fleisher.

21 MR. FLEISHER: Yes.

22 MR. MALTESE: Haemmerle versus

23 Washington Township.

24 MS. LOWNIE: The Executive Director

25 respectfully recommends that Council find that:

24

1 One. Base on the custodian's May 4,

2 2007 certification, the custodian has complied

3 with the Council's April 25, 2007 interim order in

4 providing the complainant with the requested

5 e-mail sent January 27, 2006, from Mary Caffery to

6 Mayor David Fried within five business days of

7 receiving of the Council's order.

8 Two. Based on the information

9 supplied by both parties, which was on record at

10 the time of the GRC's April 25, 2007 meeting, the
11 GRC reasonably concluded that the custodian had
12 unlawfully denied access to Page 1 of the
13 requested e-mail sent January 27, 2006 from Mary
14 Caffery to Mayor David Fried because nothing in
15 the record suggested otherwise. However, in the
16 custodian certification, dated May 4, 2007, the
17 custodian certified that she provided Page 1 of
18 the requested e-mail to the complainant on May 23,
19 2006. Therefore, based on the custodian's
20 certification under penalty of perjury, the
21 Council should amend its April 25, 2007 interim
22 order to state that because the custodian
23 certifies that she released Page 1 of the
24 requested e-mail to the complainant on May 23,
25 2006, the custodian has not unlawfully denied

25

1 access the requested record.

2 MR. MALTESE: A copy of that

3 certification went to the requester?

4 MS. LOWNIE: Yes. And we

5 subsequently asked for the complainant to

6 certificate whether or not that is true, and he

7 did not respond to our that request.

8 MR. MALTESE: Motion?

9 MS. KOVACH: So moved.

10 MR. MALTESE: Second?

11 MS. FORSYTH: Second.

12 MR. MALTESE: Thank you.

13 Roll call.

14 MS. MAYERS: Mr. Maltese.

15 MR. MALTESE: Yes.

16 MS. MAYERS: Ms. Kovach.

17 MS. KOVACH: Yes.

18 MS. MAYERS: Ms. Forsyth.

19 MS. FORSYTH: Yes.

20 MS. MAYERS: Mr. Fleisher.

21 MR. FLEISHER: Yes.

22 MR. MALTESE: Thomas versus

23 Plainfield Board of Education.

24 MS. STEESE: The Executive Direct

25 respectfully recommends the Council find that this

26

1 complaint should be dismissed, as the complainant

2 has voluntarily withdrawn this complaint in the

3 letter to the GRC, dated May 16, 2007.

4 MR. MALTESE: Okay.

5 MR. FLEISHER: So moved.

6 MR. MALTESE: Second?

7 MS. KOVACH: Second.

8 MR. MALTESE: Thank you.

9 Roll call.

10 MS. MAYERS: Mr. Maltese.

11 MR. MALTESE: Yes.

12 MS. MAYERS: Ms. Kovach.

13 MS. KOVACH: Yes.

14 MS. MAYERS: Ms. Forsyth.

15 MS. FORSYTH: Yes.

16 MS. MAYERS: Mr. Fleisher.

17 MR. FLEISHER: Yes.

18 MR. MALTESE: Caggiano versus

19 Borough of Stanhope.

20 MS. GORDON: The Executive Director

21 respectfully recommends that the Council find

22 that:

23 One. Because OPRA does not require

24 custodians to research files or compile records

25 which do not otherwise exist and because the

27

1 custodian requested additional time to respond to

2 the complainant's October 30, 2006 OPRA request

3 within the required seven-day period pursuant to

4 N.J.S.A. 47:1A-5(i), the custodian has met her

5 burden of proof that access to these records was

6 not unlawfully denied pursuant to N.J.S.A.

7 47:1A-6, see *MAG Entertainment versus Division of*

8 *ABC*.

9 Two. Based upon the Appellate

10 Division decision in New Jersey Builders
11 Association versus New Jersey Council on
12 Affordable Housing, the complainant's voluminous
13 October 30, 2006 OPRA request, a 7-page,
14 59-paragraph request for numerous records spanning
15 12 years is not a valid OPRA request because it
16 bears no resemblance to the record request
17 envisioned by the Legislature, which is one
18 submitted on a form that provides space for a
19 brief description of the records sought.

20 Three. Based on the custodian's
21 certification that granting access to the records
22 requested by the complainant, some of which date
23 back to 1994, would result in a substantial
24 disruption to the agency's operations and the
25 custodian's efforts to reach a reasonable solution

1 with the complainant that accommodates the
2 interests of the requester and the agency and the

3 voluminous nature of the complainant's October 30,
4 2006 OPRA request. The custodian's denial of
5 access was authorized N.J.S.A. 47:1A-5(i).

6 MR. MALTESE: I'm a little troubled
7 by the recommendation by the Executive Director
8 for a couple of reasons. True, Mr. Caggiano makes
9 a request for 59 different items, and it just
10 happens to cover seven pages. And one reason is
11 because Mr. Caggiano has a way of expounding on
12 certain things and, of course, takes up a lot of
13 paper. But if you really sit down and take a look
14 at what it is he's requesting, he is requesting,
15 maybe 22 or 23 of his requests deal with
16 contracts, professional contracts for two
17 professionals that the Borough hired. And the
18 Borough has admitted that it has a book of
19 contracts in which it keeps all of its
20 professional records. So on that score, in that
21 mind, it would have been an easy task to say to
22 the requester, "Here's the book of contracts if it
23 isn't in there, it doesn't exist, and I'll so say
24 that in writing. If it it's in there, you're

25 welcome to take a look at it."

29

1 A number of other things that Mr.
2 Caggiano asked for were he wanted view things. He
3 didn't want copies. He wanted to view things.
4 Then there were some maps that he was looking for.
5 Of course, that would require a reproduction. Of
6 course, Mr. Caggiano would have to pay for all
7 this stuff. And then he wanted some quality
8 photos of some pictures which were taken of a
9 particular project in his town. And then he
10 wanted specific letters, and he identifies those
11 letters by dates and by author, et cetera. And
12 there weren't many of them. I'd say probably a
13 total of maybe eight or nine. As I said, they
14 were specifically dated. And then the balance of
15 what he asked for, in my view, are really requests
16 for information or requests that the custodian
17 conduct research. Of course, that would have been

18 easy for the custodian to say "We don't do that.

19 We're not required to do that under OPRA."

20 So my concern is that at first

21 blush, you have seven pages contain 59 items, but

22 if you really take a look at it, I'm not so sure

23 that the request would have been disruptive to the

24 local office, even though this is a small office

25 and under the statute if it's less than five

30

1 thousand people you only have to keep your OPRA

2 office open, so to speak, for six hours a week, I

3 guess. Be that as it may, I'm not convinced --

4 and certainly, what we don't want to do is give

5 the impression that in order for things not to be

6 deemed disruptive that you'd have to make 59

7 individual requests, because you can only imagine

8 the burden that would place on the custodian in

9 responding to 59 requests.

10 So given all of that, I'm

11 uncomfortable in accepting the Executive
12 Director's recommendation, as proffered. What I
13 would suggest is that we send this case to the
14 Office of Administrative Law for the purpose of
15 determining whether or not the request that was
16 made here is tantamount to a disruptive request by
17 a requester as it relates to this particular
18 community. And that would be my suggestion.

19 Other comments, please?

20 I'll entertain a motion.

21 MS. KOVACH: So moved, as amended.

22 MR. MALTESE: Thank you.

23 Second, please?

24 MS. FORSYTH: Second.

25 MR. MALTESE: Thank you.

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1 Roll call.

2 MS. MAYERS: Mr. Maltese.

3 MR. MALTESE: Yes.

4 MS. MAYERS: Ms. Kovach.

5 MS. KOVACH: Yes.

6 MS. MAYERS: Ms. Forsyth.

7 MS. FORSYTH: Yes.

8 MS. MAYERS: Mr. Fleisher.

9 MR. FLEISHER: Yes.

10 MR. MALTESE: Thank you.

11 Ehrenworth versus Borough of

12 Richfield.

13 MR. CARUSO: The Executive Director

14 respectfully recommends Council find that:

15 One. The custodian's failure to

16 respond to the complainant's September 7, 2006

17 request in writing within the statutorily mandated

18 seven business days time frame resulted in it

19 being denial, thus violating N.J.S.A. 47:1A-5(g)

20 and N.J.S.A. 47:1A-5(i).

21 Two. Pursuant to N.J.S.A. 47:1A-6,

22 the custodian has not borne his burden of proof

23 that the denial of access was authorized by law.

24 Three. Based on the evidence of

25 record, it cannot be determined whether the

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1 actions of the custodian at the time of the
2 complainant's OPRA request was made were
3 intentional and deliberate with knowledge of -- it
4 should be his, not their -- wrongfulness and not
5 merely negligent, heedless, or unintentional under
6 the totality of the circumstances.

7 MR. MALTESE: Frank, so as I see
8 this, as I understand this, there was a request
9 made for documents, and the former custodian that
10 was on duty, so to speak, at the time the request
11 was made never responded.

12 MR. CARUSO: There was very minimal
13 verbal contact, which obviously we don't count as
14 actual response.

15 MR. MALTESE: And then that
16 custodian left, he retired or went --

17 MR. CARUSO: Right. By the time I

18 received this complaint, there was a new custodian
19 who was not quite familiar with what had happened.
20 But he basically immediately, once he became aware
21 of the situation, immediately gathered all the
22 records up and released them to the complainant.

23 MR. MALTESE: And is the
24 recommendation in No. 3 premised on the fact that
25 the former custodian is no longer employed by the

33

1 town, in fact, that you weren't able to ask a lot
2 of questions of him to see whether it was known
3 and willful?

4 MR. CARUSO: Not only that. It's
5 just -- the way I say it was that not only was he
6 not employed by them anymore, but I didn't feel
7 that they would be able to locate him had we
8 decided to send this off to OAL.

9 MS. STARGILL: If he had been in the
10 employee of any other state or local government

11 agency, then we would have gone after him. But
12 he's no longer employed by state or local
13 government.

14 MR. MALTESE: And that maybe true.

15 And that's what I suspected. But I don't think
16 that's any valid reason for us not to pursue
17 knowing willful violation against a custodian
18 while serving in that official capacity. So my
19 suggestion would be that we refer this matter of
20 knowing and willful to the OAL for the purpose of
21 conducting a knowing and willful hearing against
22 this individual. If he's able to be found, fine;
23 if not, then the Judge will make a recommendation
24 to us. It will probably be a default against him
25 for failure. And then we'll decide whether or not

1 to impose a fine. The fact that a custodian is no
2 longer in the employ of the agency for which
3 relief is being sought, in my view, is irrelevant.

4 The fact of the matter is that was he was in that
5 position at the time that the request was made, he
6 failed to respond. The fact that he may not even
7 live in New Jersey, well, that's something we'll
8 have to live with. If he's beyond our
9 jurisdiction, so be it. But I think we ought to
10 refer to the OAL for a purpose of knowing and
11 willful hearing against the former custodian.

12 MS. STARGILL: I would like to hear
13 from the Deputy Attorney General on this issue,
14 whether we have the authority to do that when a
15 custodian is no longer in the employ of the state
16 or local government agency. And presumably, we
17 don't know because we've not tried to track this
18 person down. Let's say we can't locate this
19 person.

20 MS. GRUNDFEST: Well, given the fact
21 that the potential fine would be personally
22 against the custodian and not against the
23 municipality, I don't really see the reason why
24 you can't go ahead and do that. This individual
25 gets a default judgment against him, that's his

1 problem. If it were going to be to the
2 disadvantage of the municipality and they were
3 unable to find the person they needed in order to
4 defend themselves, that would be a different
5 story.

6 MS. STARGILL: But what if we can't
7 locate him and he is unable to defend himself
8 before OAL? Because notice is required.

9 MR. MALTESE: Then I apologize. I
10 would suggest that like any other situation, it
11 would a publication of notice to all absent
12 defendants. That's done every day of the week.
13 It would be a newspaper advertisement. And if he
14 fails, it would be a default judgment if in fact
15 that is what's recommended by the OAL.

16 MS. GORDON: There is a process also
17 available through civil courts for opening default
18 judgment.

19 MR. MALTESE: That's true.

20 MS. STARGILL: Is that applicable to

21 the Office of Administrative Law, which is

22 different from the court?

23 MS. GRUNDFEST: Yes. And, of

24 course, the other issue is whether it's worth the

25 expenditure of resources to go ahead with the

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1 process and it's a pretty good chance that nothing

2 will come with it.

3 MR. MALTESE: Well, my view is

4 that's what we're in business for. And my

5 suggestion is that we ought to, as we've said many

6 times in the past and I think we try to keep our

7 word where possible, that we are going to

8 prosecute those custodians who, in fact, violate

9 the law. I think this is an effort in that

10 direction, and I think we ought to pursue it. It

11 may turn out to be fruitless, but I don't think

12 that we should shy away from pursuing it.

13 MR. FLEISHER: So moved, as amended.

14 MS. FORSYTH: Second.

15 MR. MALTESE: Thank you.

16 Roll call, please.

17 MS. MAYERS: Mr. Maltese.

18 MR. MALTESE: Yes.

19 MS. MAYERS: Ms. Kovach.

20 MS. KOVACH: Yes.

21 MS. MAYERS: Ms. Forsyth.

22 MS. FORSYTH: Yes.

23 MS. MAYERS: Mr. Fleisher.

24 MR. FLEISHER: Yes.

25 MR. MALTESE: Ferraro versus

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1 Township of Lakewood.

2 MR. CARUSO: The Executive Director

3 respectfully recommends that Council find that:

4 One. Pursuant N.J.S.A. 47:1A-1.1

5 and N.J.S.A. 47:1A-3(a), the records responsive to
6 this request are exempt because they are
7 investigatory records, the release of which would
8 be amenable to public interest.

9 Two. The records are also exempt
10 from disclosure pursuant to N.J.S.A. 47:1A-1.1
11 because they contain proprietary commercial or
12 financial information that could be detrimental to
13 the parties applying for licenses, if released.

14 Three. Pursuant to N.J.S.A.
15 47:1A-6, the custodian has borne her burden of
16 proving a lawful denial of access to the licensing
17 applications.

18 MR. MALTESE: Comments?

19 A motion?

20 MS. FORSYTH: So moved.

21 MR. MALTESE: Thank you.

22 Second, please?

23 MS. KOVACH: Second.

24 MR. MALTESE: Thank you.

25 Roll call.

1 MS. MAYERS: Mr. Maltese.

2 MR. MALTESE: Yes.

3 MS. MAYERS: Ms. Kovach.

4 MS. KOVACH: Yes.

5 MS. MAYERS: Ms. Forsyth.

6 MS. FORSYTH: Yes.

7 MS. MAYERS: Mr. Fleisher.

8 MR. FLEISHER: Yes.

9 MR. MALTESE: Caggiano versus New

10 Jersey Department of Law and Public Safety,

11 Division of Consumer Affairs.

12 MS. LOWNIE: The Executive Director

13 respectfully recommends that Council find that:

14 One. Although the custodian

15 verbally sought clarification from the complainant

16 on the sixth business day following receipt of the

17 request, the custodian failed to respond in

18 writing to the OPRA request within the statutorily

19 mandated seven business days, thus violating
20 N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i) and
21 resulting in a deemed denial.

22 Two. Because the custodian has
23 certified that the extended records inspection
24 contemplated by the complainant would
25 substantially disrupt the agency's operations and

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1 because the custodian has attempted reasonably
2 accommodate the complainant's request but has been
3 rejected by the complainant, the custodian has not
4 unlawfully denied access of the requested record
5 -- that should be records -- under N.J.S.A.
6 47:1A-5(c) and N.J.S.A. 47:1A-5(g). The custodian
7 has borne his burden of proving that the denial of
8 access was authorized by law under N.J.S.A.
9 47:1A-6.

10 Three. Because the custodian
11 attempted to reach a reasonable solution with the

12 requester that accommodates the interest of the
13 requester and the agency, pursuant to N.J.S.A.
14 47:1A-5(g) by offering two hours for inspection
15 free of charge prior to charging the employee's
16 hourly rate, it is concluded that the custodian's
17 actions do not rise to the level of a knowing and
18 willful violation of OPRA and unreasonable denial
19 of access under the totality of the circumstances.
20 However, the custodian's unlawful denial of access
21 appears negligent and heedless since he is vested
22 with the legal responsibility of granting and
23 denying access in accordance with the law.

24 MR. MALTESE: Comments?

25 I don't necessarily have an issue

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1 with respect to the knowing and willful aspect of
2 the recommendation, but I do have an issue with
3 No. 2. And that is that the custodian certified
4 that the extended records inspection would

5 substantial disrupt the agency's operation.
6 Because the custodian has attempted to reasonably
7 accommodate the complainant's request but has been
8 rejected by the complainant, the custodian has not
9 unlawful denied access.

10 As I read the statute, specifically
11 47:1A-5, Subsection g, it appears to me that the
12 custodian is given two choices. If the custodian
13 takes the position that the request would be
14 disruptive to the office, then before denies, he
15 needs to make a reasonable attempt to reach an
16 accommodation with the requester. And apparently,
17 that's what the custodian is alleging in this
18 case.

19 But there is also another section
20 which allows the custodian the opportunity to
21 within the seven-day period to advise the
22 requester that the documents will not be available
23 until a certain period of time. And, of course,
24 then they have to be available by that period of
25 time. In that scenario, as I read this, you don't

1 need the requester to agree on that.

2 So if it's a disruptive request,
3 then you try to do the accommodation. If it's not
4 a disruptive request but maybe a voluminous
5 request, the custodian has the right to pick a
6 reasonable date in the future as to when these
7 documents would be available.

8 In this particular case, I'm not
9 sure that we have enough -- I don't think it's
10 enough to suggest that it's disruptive, but I'll
11 be able to give you two hours and if you pay for
12 anything over two hours, it's okay, we'll provide
13 somebody to be here. So that, to me, doesn't
14 sound like it's disruptive. It sounds like it's
15 more of a monetary budgetary issue that's being
16 raised by the custodian here. And I have no idea
17 where the custodian came up with the two hours for
18 free and then we're not going to charge you for
19 anything over that.

20 But my suggestion would be on this
21 No. 2 that we take another look at whether or not
22 this request was, in fact, disruptive to the
23 office. If, in fact, it was disruptive and the
24 custodian attempted to reach an accomodation with
25 Mr. Caggiano and could not, then I would support

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1 the recommendation as you provided it. But I
2 don't think we have enough before us, because on
3 the one hand he says disruptive, on the other hand
4 I'll give you two hours free and you pay for the
5 rest and you can stay here all day.

6 The other thing I want to just bring
7 to your attention is that early on when OPRA was
8 initially adopted, we attended many informative
9 sessions with custodians and others and suggested
10 to them that this law will present some issues for
11 folks who have small offices, small agencies, and
12 that there will be some disruption when people

13 come in and say, "I want to see those documents
14 which the law says I have the right to see
15 immediately," there will be some disruption in
16 that regard. And we suggested at that time -- and
17 I think this is perfect case that sort of jumps
18 out at us with respect to what I'm about to say.
19 And that is, that we suggested that the offices
20 need to purchase view only monitors and have those
21 set aside so that people can take a look at things
22 while the custodian and the staff can go about
23 their business. We've also suggested, and a
24 number of towns have implemented, is that there
25 also be a button there to allow for printing, but

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1 the printing comes up behind the desk of the clerk
2 so that the clerk knows how much to charge when
3 the requester pushes the print button.

4 So there are ways to, I think,
5 accommodate the law. And I think those things

6 have to be looked at rather than sticking with the
7 old fashioned philosophy that if I don't have time
8 to show it to you, then you're not going to see
9 it.

10 So I would ask that we continue this
11 case until the next meeting for the purpose of
12 taking another look at the disruptive aspect and
13 see whether or not, in fact, this was disruptive
14 or whether this is monetary thing, okay?

15 MS. STARGILL: Okay.

16 MR. MALTESE: Any objections to that
17 approach?

18 MS. STARGILL: May I just comment,
19 Mr. Chairman, that your suggestions are good ones
20 as to what custodians should do, maybe best
21 practices is usually what I call them when I do my
22 training sessions to records custodians. However,
23 the GRC does not have the authority to mandate
24 that a custodian set those procedures in place.

25 MR. MALTESE: Absolutely. That's

1 correct. Thank you for clarifying that.

2 All right, I'll entertain a motion

3 then to carry this.

4 MS. KOVACH: So moved.

5 MR. MALTESE: Thank you.

6 Second, please?

7 MS. FORSYTH: Second.

8 MR. MALTESE: Thank you.

9 Roll call.

10 MS. MAYERS: Mr. Maltese.

11 MR. MALTESE: Yes.

12 MS. MAYERS: Ms. Kovach.

13 MS. KOVACH: Yes.

14 MS. MAYERS: Ms. Forsyth.

15 MS. FORSYTH: Yes.

16 MS. MAYERS: Mr. Fleisher.

17 MR. FLEISHER: Yes.

18 MR. MALTESE: Thank you.

19 Rejan versus New Jersey Department

20 of Law and Public Safety.

21 MR. CARUSO: The Executive Director

22 respectfully recommends that Council find that:

23 One. Pursuant to N.J.S.A.

24 47:1A-9(a) and N.J.S.A. 47:1A-3(a), the records

25 relevant to this request are exempt from

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1 disclosure as information pertaining to the

2 conduct of a health care professional which has

3 not been subject of a final disposition under

4 N.J.S.A. 45:1A-36.

5 Two. The custodian has borne his

6 burden under N.J.S.A. 47:1A-6 of proving a lawful

7 denial of access to copies of complaints filed

8 against Dr. Mark Weber with the New Jersey

9 Division of Consumer Affairs State Board of

10 Dentistry because the records relevant to this

11 request are exempt from disclosure as information

12 pertaining to the conduct of a health care

13 professional which has not be subject of final

14 disposition under N.J.S.A. 45:1A-6.

15 MR. MALTESE: Thank you. What we've

16 said on a number of occasions that OPRA does not

17 trump other laws. This is a perfect example of

18 that.

19 I'd like to get a motion, please.

20 MS. FORSYTH: So moved.

21 MR. MALTESE: Thank you.

22 Second?

23 MS. KOVACH: Second.

24 MR. MALTESE: Thank you.

25 Roll call.

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1 MS. MAYERS: Mr. Maltese.

2 MR. MALTESE: Yes.

3 MS. MAYERS: Ms. Kovach.

4 MS. KOVACH: Yes.

5 MS. MAYERS: Ms. Forsyth.

6 MS. FORSYTH: Yes.

7 MS. MAYERS: Mr. Fleisher.

8 MR. FLEISHER: Yes.

9 MR. MALTESE: Long versus New Jersey

10 Department of Law and Public Safety.

11 MR. STEWART: The Executive Director

12 respectfully recommends that the Council find

13 that:

14 Number One. The custodian comply

15 with the provisions of N.J.S.A. 47:1A-5,

16 Subsection i, by providing a written response to

17 the complainant's request denying access to

18 government records within seven business days of

19 receiving complainant's OPRA request.

20 Number Two. There was no unlawful

21 denial of access because the requested records are

22 criminal investigatory records pursuant to

23 N.J.S.A. 47:1A-1.1 and Executive Order No. 48 and

24 are exempt from disclosure.

25 MR. MALTESE: Thank you.

1 Any comments?

2 MR. FLEISHER: So moved.

3 MR. MALTESE: Second?

4 MS. KOVACH: Second.

5 MR. MALTESE: Thank you.

6 Roll call.

7 MS. MAYERS: Mr. Maltese.

8 MR. MALTESE: Yes.

9 MS. MAYERS: Ms. Kovach.

10 MS. KOVACH: Yes.

11 MS. MAYERS: Ms. Forsyth.

12 MS. FORSYTH: Yes.

13 MS. MAYERS: Mr. Fleisher.

14 MR. FLEISHER: Yes.

15 MR. MALTESE: Executive director's

16 report?

17 MS. STARGILL: Yes. We have found

18 in our hearing findings and recommendations for

19 the Council that there are likely two additional

20 categories ripe for the Council's approval,

21 vesting the power of the executive director to
22 prepare administrative dispositions. And as you
23 may know and as articulated in our re-proposed
24 rules, soon to be promulgated, hopefully, that you
25 have invested in the Executive Director the power

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1 to administratively prepare findings for
2 complaints involving certain fact patterns.
3 Simply, you've decided that a full-blown analysis
4 is not necessary. One would be when the
5 Council -- when staff has received a duplicate
6 complaint. Sometimes we don't always know upon
7 the face of a denial of access complaint that, in
8 fact, we already have one in the system because of
9 various differences included in the packet. And
10 lately, where we found one, one was adjudicated
11 today on our agenda. And I just want to bring
12 that to your attention.

13 Also, one of our categories that you

14 previously approved, when a request is not a valid
15 OPRA request was somewhat vague, actually. And
16 I'm just changing that title to read, "No
17 correspondence received from complainant regarding
18 request," because that's really the issue,
19 particularly in light of advisory opinion in which
20 we very clearly outlined based on formal legal
21 advice we received from the Attorney General's
22 Office what constitutes a valid OPRA request.
23 However, if a custodian receives a letter request,
24 it has been the Council's position that the
25 custodian has to offer the requester the actual

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1 official form because our advisory opinion does
2 not release the custodian of the obligation to
3 assist the requester in filing the request.
4 That's different from a scenario when the
5 custodian has not received anything from the
6 requester about a request for which the requester

7 files a complaint. So that's just a clarification

8 I wanted to bring to your attention.

9 Secondly and lastly, next month

10 marks the fifth anniversary of OPRA and the GRC,

11 and as such I'd like -- I'm suggesting to the

12 Council, pursuant to your vote and approval -- or

13 maybe you don't need a vote, but your approval,

14 that in lieu of a meeting we open up this time

15 next month to an OPRA seminar open to the public.

16 The statute requires that the Council educate

17 records custodians, very specifically in Section

18 7. And there are many times when members of the

19 public will call the hotline and they want to know

20 when is our next OPRA presentation. Well, because

21 I rely on the hospitality of the various counties

22 or municipalities hosting me or state departments

23 hosting me to give these training sessions, I have

24 to direct the public to those hosts or hostesses.

25 Well, I'd like for once for the GRC to have some

1 control and affirmatively open our doors to the
2 public and train them. So it would kind of be a
3 GRC open house, so to speak.

4 MR. MALTESE: How would you propose
5 correlating that with our meeting?

6 MS. STARGILL: Very honestly, this
7 will be in lieu of my meeting, because my
8 presentations are generally an hour and a half if
9 I run through it and there are no questions, and I
10 routinely entertain questions, an hour and a half
11 to three hours. So it would be in lieu of our
12 meeting.

13 Additionally, I suggest that maybe
14 we have -- you know, we have a lot of new Council
15 members, so to speak. And I'm including Kathryn,
16 although she's been around. But there are certain
17 training that we could perform in closed session,
18 or I think it's called a work session, a working
19 session of governing body or OPRA agency, your use
20 of the secure portal for which under My New Jersey

21 for which we scan and include all of the case
22 materials for each or complaint materials for each
23 findings and recommendations received.
24 Vince, I think you're the only one
25 of the current Council who has been formally

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1 trained how to use that how to access that. We've
2 done piecemeal training, but I think there are
3 other things, operational things, that we could go
4 over in regards to properly informing you guys or
5 training you guys on how we operate as a staff.
6 So perhaps we do the seminar to the public for
7 three hours and then spend an hour in a working
8 session kind of training you guys on our tools.

9 MR. MALTESE: So you're proposing
10 that we not adjudicate any matters next month?

11 MS. STARGILL: I'm not going to say
12 that. I would like to adjudicate administrative
13 case dispositions. Those, for sure.

14 MR. MALTESE: I'm just thinking out
15 loud. Given that it's probably less than 30 days
16 away, is it better to for you to do that in
17 August?

18 MS. STARGILL: No. I want to mark
19 the fifth anniversary of OPRA.

20 MR. MALTESE: I see. That's right.

21 MS. FORSYTH: I will not be at the
22 next month's meeting.

23 MS. STARGILL: Will you be here in
24 August?

25 MS. FORSYTH: Yes.

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1 MS. STARGILL: We just talked
2 about --

3 MR. MALTESE: I may or may not be
4 here in August.

5 MS. STARGILL: Well, actually,
6 you're the veteran, so this is the one time you

7 would miss this training.

8 MR. MALTESE: Well, why don't you --

9 MS. STARGILL: Let's work it out.

10 MR. MALTESE: I think it's a great

11 idea.

12 MS. FORSYTH: I think it is, too.

13 MR. MALTESE: I think you ought to

14 pursue it. Let's work it out. Maybe -- I don't

15 want to say a special meeting, but maybe a special

16 meeting we could do that.

17 MS. STARGILL: I'll work it out.

18 And we'll be, you know, issuing a press release

19 because I want this publicized very widely

20 throughout the state. I would even be open -- I

21 have to check availability and see what

22 permissions are required, but if we think room is

23 not going to be large enough to accommodate the

24 public, find another venue; I don't know.

25 MR. MALTESE: Well, certainly,

1 that's within your authority to pursue, and I
2 think you ought to that. Report back to us by
3 e-mail and what have you, okay?

4 MS. STARGILL: Sure.

5 MR. MALTESE: Anything else?

6 MS. STARGILL: That is it for me.

7 MR. MALTESE: Open the floor to
8 members of the public.

9 Yes, sir? Name and affiliation.

10 MR. YARSINSKY: My name is Rich
11 Yarsinsky. I'm manager of the Open Public Records
12 Act Program within the Department of Environmental
13 Protection.

14 THE COURT REPORTER: The spelling,
15 please.

16 MR. YARSINSKY: It's
17 Y-A-R-S-I-N-S-K-Y.

18 I thought that since this is the
19 fifth year anniversary of OPRA, I just wanted to
20 talk to you about the accomplishments of the
21 Department of Environmental Protection working on

22 OPRA requests. We've received and process over
23 56,000 OPRA requests since OPRA began five years
24 ago. The DEP receive 65 percent of all OPRA
25 requests from all the state agencies together.

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1 Everybody wants to see our documents. We have
2 over 5,000 people come in on a yearly basis to
3 look at documents. We have a couple thousand
4 people ask for copies of documents. When they get
5 the copies -- and we're not talking about one
6 page, we're talking about boxes and boxes of
7 documents that they're paying for. We have three
8 people that make copies of documents all day long,
9 where they invest their full time job. There's
10 120 people within the DEP that work on OPRA.
11 There's about 25 people that do it full time. Out
12 of the 56,000 OPRA requests that we've received,
13 we've only had 9 complaints, and we haven't loss a
14 case yet. Thirteen million dollars has been spent

15 processing OPRA requests. And as you know, we
16 don't get any funding from the Legislature. So
17 we're taking money away from cleaning up sites to
18 process OPRA requests.

19 I have found that -- I believe a lot
20 of people are abusing OPRA to make money. We've
21 received, like, a hundred requests in a day;
22 that's not uncommon. We try to get them to narrow
23 it down. A lot of times they don't, and we still
24 meet the time frame. I just did -- a couple weeks
25 ago we got 80 requests from one person. We have

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1 one law firm that has sent in over 700 requests in
2 five years.

3 In regards to the monitors that you
4 were talking about. People come in and they
5 review like -- they can review like 20 boxes of
6 documents at a time. So I don't think a monitor
7 would work in our case.

8 That's all I wanted to say -- oh,
9 with regards to your website, that is very
10 valuable to the Department of Environmental
11 Protection. I found that any time I don't know
12 which way to go on a certain case, I do a search
13 to see if you've had a similar case like it, and
14 it's been very helpful. I use your website on a
15 daily basis, and it's really helped the Department
16 of Environmental Protection. And I would really
17 like to see the minutes -- there haven't been
18 minutes put onto the web page since last year.

19 MS. STARGILL: That's not true. Our
20 minutes are included on the web page.

21 MS. PAMIDIMUKKALA: January is not
22 even approved yet. So as it is approved, it is
23 put on the website.

24 MS. STARGILL: April's were added
25 last month.

1 MR. MALTESE: There used to be
2 following like a week later.

3 MS. PAMIDIMUKKALA: That's correct.
4 But if it is not approved, we cannot put it --

5 MS. STARGILL: They're approved at
6 the following meeting, obviously. But we have
7 been a little bit slower.

8 MR. YARSINSKY: I mean, it's like
9 six months now, and it would really help the DEP
10 if the minutes were up there right away. I guess
11 I could put an OPRA request in.

12 MS. STARGILL: Our minutes that have
13 been approved for 2007 are on our website. We
14 have had quorum issues in approving --

15 MR. YARSINSKY: January's minutes
16 aren't on the website.

17 MR. MALTESE: No.

18 MS. STARGILL: But those have not
19 been approved due to quorum issues. So that's the
20 only reason. But going forward, we're going to
21 have transcript that we'll be adding to our

22 website in lieu of minutes going forward.

23 MR. MALTESE: What you should find

24 on there is February and April's. We've just

25 approved March's and May's today, so they'll go on

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1 the website. January's isn't going to happen

2 probably until August sometime because we're not

3 going to approve until our July meeting. However,

4 going forward you may want to --

5 MS. STARGILL: That's what I'm

6 saying. Really out of necessity our recording

7 machine device broke, and actually what I didn't

8 mention is that we have no recording from last

9 month's meeting. The equipment was working,

10 according to the indicator light and everything,

11 but the equipment was old so it's broken. And so

12 going forward, we'll be having a court reporter in

13 attendance transcribing the meeting and we'll be

14 posting a PDF version of the transcription on the

15 website.

16 MR. YARSINSKY: I mean, it's a great
17 website. What I do is anytime I'm confused, say,
18 something deliberative comes up, I go and do a
19 search on all your cases and read --

20 MS. STARGILL: It's going to be even
21 better, Rich, once I get a chance to analyze all
22 of the 969 decisions of the GRC and make sure
23 they're in the proper category. That was a little
24 loose, I think, in the past.

25 MR. YARSINSKY: I just wanted to say

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1 that it seems like the public is very happy with
2 the DEP. We're trying to be open and transparent.
3 We get back to people within six days. We don't
4 wait seven days. And I think one of the reasons
5 why we're so successful is because we call people
6 up on the phone on a daily basis. We don't
7 just -- by law, you can just mail them, saying

8 yes, we do have documents or we don't. And we
9 actually call them up. Anytime there's a problem,
10 we resolve it right way. I think that's why we're
11 successful.

12 MR. MALTESE: You're to be commended
13 for that.

14 MR. YARSINSKY: Thank you.

15 MS. STARGILL: I would like to
16 say -- I don't make a habit of commenting on the
17 public comments. I'm rather jealous of Rich's
18 setup because he actually has more employees in
19 his department, his group, dedicated to responding
20 to OPRA requests than the GRC have.

21 MR. YARSINSKY: Like I said, there
22 are about 25 people that do it full time, and
23 there's people that have other jobs but then they
24 also have OPRA work to do also. We realize that
25 it's important to the public to receive access to

1 documents quickly. That's what we're doing at the

2 DEP.

3 MR. MALTESE: Thank you.

4 Jyothi, I want to ask you a

5 question. Is it possible to eliminate a step in

6 finding a case?

7 Right now, if you're unsure about --

8 if you don't know the name of the case and you

9 want to look up "knowing and willful," you go to

10 the -- you press K and it shows "knowing and

11 willful." So now you have to go back and type

12 knowing and willful in the subject to get the

13 cases. Is it possible that you can click on

14 "knowing and willful" and have something that

15 comes up that shows you the names of all the cases

16 and then you click on the case that you want?

17 MS. STARGILL: Not with the IT

18 equipment we have.

19 MS. PAMIDIMUKKALA: That's not in my

20 realm to do it. But I can pursue it NJOIT to work

21 with them and see the time frame. It's not

22 immediate. It has to be proposed and it has to be

23 approved by NJOIT.

24 MS. STARGILL: Jyothi, wouldn't you
25 say that from the meetings we've had with them

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1 though, that that's one of the many capabilities
2 we discussed that they don't have?

3 MS. PAMIDIMUKKALA: Yes.

4 MS. STARGILL: We have proposed a
5 whole list of about 10 features we would like for
6 that search engine, that search mechanism. It's a
7 very outdated --

8 MS. PAMIDIMUKKALA: The whole
9 infrastructure has to be changed.

10 MR. MALTESE: It's a double step
11 find. You have to find out first and then you
12 have to go back and type it in.

13 MS. PAMIDIMUKKALA: It is doable,
14 but its infrastructure, the way it is set up right
15 now, has to be completely be redone.

16 MS. STARGILL: Jyothi, let's be
17 careful what we're saying. It's not doable with
18 the current IT equipment. So we're talking about
19 IT having to change their applications, which is
20 not going to happen anytime soon. Although I
21 understand they're under -- potentially under
22 reorganization or something. But it is not
23 capable, it's not a possibility in the near
24 future, unfortunately.

25 MR. MALTESE: Other members?

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1 Yes, sir, in the back.

2 MR. BALDWIN: Good morning. Don
3 Baldwin. I reside in Readington Township. At the
4 last meeting, I expressed as best I could how
5 vital I feel the work of the Council is. I would
6 just like to add to that that I would welcome with
7 great interest the seminar that you are proposing
8 that would be accessible to the public.

9 I have three things. I'll try to be
10 as brief as possible here.

11 Off the website, which I also find
12 very helpful, as the gentleman said prior, there
13 was a section explaining in bullet points OPRA.
14 The one I'm referring to is attorney-client
15 privilege. "This paragraph," I'll quote, "shall
16 not be construed as exempting access from attorney
17 or consultant bills or invoices except as such
18 bills may be redacted to remove any information,
19 et cetera."

20 I think I have an understanding of
21 attorney-client privilege. In the case of my
22 municipality, they recently contacted me to say
23 that a public affairs group fell under
24 attorney-client privilege. And I'm a little
25 confused. I wanted some clarification on that,

1 because an attorney is a licensed member of the

2 Bar, but a consultant could be -- anybody could be
3 considered in a broad sense a consultant if he was
4 retained by a municipality, for example. It seems
5 to me that that provides a very slippery slope if
6 anybody can be called a consultant and that and
7 therefore their communications can be exempt and
8 under privilege. So I just wanted some
9 clarification on that from the Council.

10 MS. STARGILL: We are not authorized
11 to give legal advice. I think, as you phrase
12 things, maybe it's more of an inquiry. We give
13 all kinds of disclaimers when we provide guidance
14 through the inquiry process because, of course,
15 everything depends on the facts involved in this
16 situation. Generally speaking, you're right.
17 Communications between other than an attorney and
18 a client don't fall within, obviously, the
19 attorney-client privilege, however, there is
20 something akin to the attorney-client privilege of
21 the attorney-client work product. I think based
22 on case law if the attorney hires an expert then

23 those communications could be privilege. It
24 really depends. So the Council cannot give you
25 legal advice on your scenario because it depends

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1 on a lot of different facts. If you were to file
2 a complaint because you were denied access to a
3 record, under this rationale of the custodian, then
4 we would pursue a full blown analysis, legal
5 analysis, but we would also have all of the facts,
6 your side of the story and your custodian's answer
7 to the complaint to help us better determine what
8 the legal answer is.

9 MR. BALDWIN: So if I understand
10 you, then, consultants could fall under
11 attorney-client?

12 MS. STARGILL: Maybe if they are
13 considered an expert. So all consultants
14 obviously are not experts, so that wouldn't apply
15 to all consultants. There is a whole gamut of

16 legal analysis that would be involved in
17 responding to your inquiry. I apologize. It's
18 not cut and dry.

19 MR. BALDWIN: I understand. Thank
20 you for the response.

21 The final thing I wanted to inquire
22 about was -- and I got this off your website also.
23 And I had sought information. I've been following
24 this case for some time when it was originally
25 filed in the fall of '04. So it's approaching its

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1 third anniversary, and to the best of my
2 knowledge, it's unresolved. And that is Case No.
3 2004-150. And there was what was called an
4 interim decision on access issued in this case,
5 according to your website. But is that the same
6 an interim order? Is there a distinction?

7 MS. STARGILL: It's the same thing.

8 MR. BALDWIN: It's essentially the

9 same thing.

10 MS. STARGILL: I've uniformed --

11 we've basically made all of our decisions more

12 uniform.

13 MR. BALDWIN: Well, if I may say, if

14 they're interchangeable, then the interim order

15 that was issued on this case on February 10th of

16 '05 has fallen off the screen, and the custodian

17 on 30 December '05 didn't provide the

18 documentation or records required or the

19 information required. Then again on the 21st, no

20 extensions, further extensions would be granted.

21 Then it was not provided again by the custodian

22 and special counsel.

23 MS. STARGILL: So you're talking

24 about matters in regards to those specifics which

25 was before my tenure, so I apologize.

1 MR. MALTESE: What's the name of the

2 case?

3 MS. STARGILL: Seibert (ph). We
4 have those documents, so that's not the issue.
5 The issue is that up until we hired Mr. Stewart,
6 John Stewart, who is our in camera attorney, we
7 didn't have the resources to conduct an in camera
8 of 2,700 individual redactions of those attorney
9 bills.

10 MR. BALDWIN: I understand that.
11 The reason I'm confused, though, it says in here
12 that it is not appropriate for the Council to
13 consider an in camera review of the material.

14 MS. STARGILL: I would have to look
15 at what's on our website, because potentially
16 there's a decision that's not included in that
17 string of decisions.

18 MR. BALDWIN: That's what confused
19 me because it said --

20 MS. STARGILL: We very definitely
21 have those records.

22 MR. BALDWIN: So you got the bond
23 index through the documents?

24 MS. STARGILL: Yes.

25 MR. MALTESE: You have Mr. Baldwin's

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1 address.

2 MS. STARGILL: Yes.

3 MR. MALTESE: All right. I think

4 you should communicate with Mr. Baldwin to satisfy

5 inquiries.

6 MS. STARGILL: Sure. I'm going to

7 ask Ms. DeVoe to follow-up on this matter, please.

8 MR. MALTESE: Thank you.

9 MR. BALDWIN: Thank you.

10 MR. MALTESE: Thank you, Mr.

11 Baldwin.

12 Anyone else?

13 Yes, sir?

14 MR. O'SHEA: For the record, my name

15 is Martin O'Shea. I live at 10 Lakeshore Road

16 East in Stockholm. And I'm here essentially for

17 two reasons. One, as only, I guess, two of you
18 would know or remember, I've been somebody who
19 used to come to these meetings and complain about
20 the wheels falling off the cart and saying things
21 like, in writing, for instance, that you were --
22 the GRC rather -- not you -- were toothless
23 tigers, that type of thing. So I felt it only
24 fair that I come today and applaud you for
25 finally -- and I shouldn't have said finally. For

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1 finding a custodian. You'll allow an Irishman a
2 little bit of fun by saying even if it took you
3 five years, I was concerned at times that it was
4 going to happen in my lifetime. I'm delighted to
5 have seen that you've gotten to that point. Not
6 only did you find one, but you find two in the
7 very same day. So as I said, I'm here for two --
8 congratulations. Thank you very much on behalf of
9 a lot of people who I come in contact with on open

10 government issues.

11 I said I'm here for two reasons.

12 The second reason is that I think I probably

13 should take the rest of this to the chapter from

14 the DEP because he gets things done, but there are

15 things that you're talking about categories or

16 different types of categories, and I'd like to

17 suggest to you that there might be a category

18 which would be difficult -- I know this, I

19 understand this. It would be difficult for you to

20 manage, but there are OPRA complaints, and I've

21 made -- OPRA requests, rather. And I've made many

22 of them that are time sensitive. And you get

23 defeated on that at the municipal level or county

24 level or wherever. And then you file a complaint

25 in here, and it sits for a year. And somewhere

1 there has to be an accommodation. I don't know

2 exactly how that would work, but I would like to

3 give you an example that is a case of my own. I'm
4 not arguing the case, I'm just using it as an
5 example of something that could be addressed or
6 thought about when you're having the meeting with
7 the public or whatever.

8 On July 10th of 2006, I made a
9 request of the Municipal Utilities Authority of
10 West Milford. She responded -- the custodian
11 responded to me on the very next day. And
12 partially she gave me part of what I was after and
13 told me I couldn't have the rest of it, and I
14 filed a complaint with you on July 14th. What I'm
15 really going after is that I'd like to tell you
16 that that involved minutes of executive sessions
17 that involved the possibility taking of land by
18 eminent domain. And it's in a very sensitive,
19 environmentally sensitive municipality that is 100
20 percent in the Highlands protection area and it's
21 an area that the land would have been used to
22 build a sewer system for 115 homes or so. And as
23 a guy who's been in the news business most of his

24 life, I can tell you it was a very important story
25 to the people who live in that municipality and in

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1 the surrounding municipality. They were going to
2 possibly take land for a sewer in a place that
3 shouldn't have been built. So there was a sense
4 of urgency from a news standpoint in that regard.

5 I filed my complaint in July of
6 2006. And on February 21st of 2007, you made a
7 decision to seek an order of enforcement from
8 Superior Court. That's never been done. I've had
9 conversations and e-mail exchanges, and I was told
10 in April in an e-mail that the Division of Law is
11 completing the court documents to be filed in
12 Superior Court. "We will inform you when you
13 filed the action."

14 By the way, I have copies of all of
15 this. There's eight copies if someone would take
16 them for the Council, please.

17 And we're sitting here now
18 approaching three or four months since I was told
19 that the Division of Law is completing the court
20 documents. Now, I know that everybody works for
21 the state -- everybody in Trenton is busier than
22 the rest of the world. I understand all of that.
23 I've known that for a very long time. So I
24 checked yesterday with an attorney, and he said to
25 me that it's a relatively simple procedure to file

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1 this document which you called an enforcement
2 order. It's an enforcement order. I'm sure
3 there's enough attorneys in the room to know what
4 I'm talking about. He also told me that it's
5 simple enough that a non-lawyer such as myself
6 could do that.

7 What I'm asking here today is, is it
8 ever going to be done? Can you give me a
9 guesstimate?

10 I tell you why, Kathryn, because I'm
11 a lot older than I was when I used to come here
12 and say the wheels are falling off the cart. That
13 was about three years ago. I don't make
14 long-range plans. This is a year. It's six
15 months approximately since the decision was made.
16 And I know you're on my side and I realize --
17 excuse me for interrupting you once again, but I
18 am an Irishman, so I'm entitled. The fact is,
19 these are things that hurt your image with the
20 public. And I can tell you that just within the
21 past couple of weeks, this issue came up at a
22 Council meeting in the Township of West Milford,
23 and the attorney for the MUA was quizzed about it
24 by the Township Council, and he turned around and
25 he said "Those documents are public. There's

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1 nothing wrong with that. They're all public
2 documents."

3 And I resent that because you have
4 put me in a position where the Council of West
5 Milford challenges and questions my credibility
6 because they look at me and say, "Well, what's
7 going on here?"

8 I'm the one who supplied them with
9 the information about the enforcement order being
10 sought. And I'd like to -- there's a meeting
11 there tonight. And I'd like to be able to go back
12 to them and tell them that something is going to
13 happen in my lifetime.

14 Thank you very much.

15 MR. MALTESE: Thank you.

16 Are you aware of that situation?

17 MS. STARGILL: I am. And I have
18 been on the Division of Law to get those papers
19 prepared and filed with the courts. I have
20 pursued it. I've had ammunition because I could
21 forward Mr. O'Shea's e-mail and, say, "Look."

22 MR. O'SHEA: I'll send you more.

23 MS. STARGILL: And I'm going to give
24 Andria an opportunity to respond although she's

25 not our normal Deputy Attorney General, but I've

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1 been told time and time again the reality is
2 because the Division of Law was one of the first
3 agencies to experience layoffs, that they're all
4 strapped and what have you. Also, it's
5 interesting the legal advise you received and I
6 know how legal advice goes because I was tax
7 attorney before this and there was a joke. Of
8 course, I don't remember it exactly, but
9 basically, you know, you would get -- if there's
10 five tax attorneys in a room who prepared tax
11 returns, you would get seven different returns or
12 seven different answers. But what I've been told,
13 the information I've received is that it's not as
14 easy as just filing an enforcement order. It's a
15 particular type of motion that has to be filed
16 that's not called an enforcement order. And there
17 was some debate, I know, in the Division of Law

18 about whether it was an order to show cause or
19 some other kind of order, what have you. But, I
20 mean, the bottom line is I've been pursuing it.
21 And I know last I heard this week, yesterday, as a
22 matter of fact, was that Debra is almost complete
23 with the papers.

24 I turn it to you.

25 MR. O'SHEA: And she's on vacation?

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1 MS. STARGILL: She's on vacation
2 this week.

3 MS. GRUNDFEST: For four days.

4 MR. MALTESE: Do you have any
5 knowledge?

6 MS. GRUNDFEST: All I can tell is
7 that I will certainly relay this in no uncertain
8 terms when I get back to the office. I'm sorry, I
9 have no information about it.

10 MR. O'SHEA: Can I call you this

11 afternoon and see what your answer is?

12 MS. GRUNDFEST: If you want to, yes.

13 MR. O'SHEA: I'll get your name and

14 number.

15 MR. MALTESE: I would ask like to

16 ask you this question. Is there any prohibition

17 in our hiring our independent counsel to pursue

18 this?

19 MS. STARGILL: Yes. By statute,

20 designated outside counsel may only be hired by

21 state entities to represent areas for instances of

22 like we utilized when there's a conflict of

23 interest. That would be because the Attorney

24 General represents the GRC and the custodial

25 agency that is the opposing party. The Division

1 of Law sticks so closely to that statute which

2 allows us to hire a designated outside counsel for

3 those purposes that an Assistant Attorney General

4 has to review all of our attorney bills that we
5 receive from law firms. And if they see any
6 matters involving a non-state agency, like a local
7 or county agency, it gets kicked, those fees gets
8 kicked back. So it's by statute. We have no
9 control over that.

10 MR. MALTESE: Let me make a
11 suggestion. Please check on it. Thank you for
12 entertaining Mr. O'Shea's phone call. I think I'd
13 like you to talk to Kathryn and let her know what
14 you found out. If it wasn't anything promising, I
15 think you've got to go up the ladder and speak
16 with Mr. Scheindlin or someone even higher than
17 him.

18 MS. STARGILL: You know, there have
19 been many times when I've had to, you know, ask.
20 But again, I understand the advice we received has
21 been coming slower, but slower after the layoffs.
22 Things were better before the layoffs.

23 MR. MALTESE: I can foresee a
24 compliant by Mr. O'Shea to Superior Court. I can

25 foresee a judge really criticizing the DOL. It's

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1 been, what, some seven, eight months?

2 MS. STARGILL: Well, since our

3 February.

4 MR. MALTESE: February. I can still

5 see criticism there. So I think for all

6 concerned, especially for Mr. O'Shea so that he

7 gets his just due as a citizen of the state that

8 you ought to pursue that with all vim and vigor.

9 Anyone else care to be heard?

10 Yes, sir?

11 MR. PAFF: For the record, I'm John

12 Paff, 1605 Amwell Road in Somerset, New Jersey.

13 And I was troubled by the -- maybe I understand it

14 correctly, what happened in Tina Renna versus

15 Union County Alliance. From the comments that

16 were made here today, what I understand to be was

17 that this was a motion for reconsideration filed

18 by, apparently, the Alliance who had previously
19 been ordered or been told that they are a
20 government agency. And they found a motion for
21 reconsideration. And the basis for the motion for
22 reconsideration was a 2005 contract with the
23 County of Union that suggested there was a vendor
24 contractor relationship between the county and the
25 alliance. And this caused the motion for

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1 reconsideration to be granted because it was
2 received as a new piece of evidence in June of
3 2007, which is the present month; is that correct?

4 MS. STARGILL: No, that is not
5 correct. We talked about the contract because
6 that is part of the new evidence we received. The
7 motion of reconsideration was entertained, quite
8 honestly, because in the course of the
9 investigation the opposing party, the Executive
10 Director, I think, of the Union County Alliance,

11 was not copied or correspondence included in the
12 background section of the findings and
13 recommendations for which the Council based its
14 decision. So theoretically, this individual did
15 not have an opportunity to respond to, which is
16 our current policy -- I know that's something that
17 you wrote me in a letter just recently about, the
18 whole how many submissions are allowed by the
19 parties. But this individual did not have an
20 opportunity to respond to this correspondence.
21 That was, in fact, included in the Council's
22 deliberation of my recommendation.

23 MR. PAFF: Okay, that changes
24 everything.

25 MS. STARGILL: Yes.

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1 MR. PAFF: My understanding, at
2 least, and what I was going to say -- and I'll
3 probably still say it, was that I thought that

4 they just received this on June of 2007 and that

5 there was an opportunity afforded before.

6 MS. STARGILL: Absolutely not.

7 MR. PAFF: I want to make sure

8 that -- I was concerned that --

9 MS. STARGILL: No, we would never do

10 that.

11 MR. PAFF: Okay. That's fine.

12 That's all I have to say.

13 MR. MALTESE: Anyone else care to be

14 heard?

15 If not, I'll entertain a motion to

16 adjourn.

17 MS. FORSYTH: So moved.

18 MR. MALTESE: Thank you.

19 MS. KOVACH: Second.

20 MR. MALTESE: Thank you.

21 Thank you, ladies and gentlemen.

22 See you in July.

23 (Meeting adjourned at 11:56 a.m.)

24

25

1 C E R T I F I C A T E

2

3 I, Lisa C. Bradley, a Certified

4 Court Reporter and Notary Public of the State of

5 New Jersey, do hereby certify that the foregoing

6 is a true and accurate transcript of the meeting

7 as taken stenographically by and before me at the

8 time, place and on the date hereinbefore set

9 forth, to the best of my ability.

10 I DO FURTHER CERTIFY that I am

11 neither a relative nor employee nor attorney nor

12 counsel of any of the parties to this action, and

13 that I am neither a relative nor employee of such

14 attorney or counsel, and that I am not financially

15 interested in the action.

16

17

18

19 LISA C. BRADLEY, CCR, RPR

20 CCR NO. 30XI00228700

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23

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25 Dated: July 25, 2007